

I. STATEMENT OF THE CASE

In Petition No. S-2821, William A. Martinez and Luz Marina M. Avella, seek approval of a Special Exception under Zoning Ordinance §59-G-2.00 to allow an accessory apartment on property zoned R-90 and located at 4000 Heathfield Road, Rockville, Maryland 20853. The legal description of the property is Lot 1, Block 1 in the English Manor Subdivision (Tax Account Number 01373458).

On August 18, 2011, the Board issued a notice of a public hearing before the Hearing Examiner for January 5, 2012. Exhibit 12(b). Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC), in its report dated December 21, 2011, (Exhibit 15), recommended approval of the Petition, with four (4) conditions. The Department of Housing and Community Affairs (“DHCA”) inspected the property on December 14, 2011. Housing Code Inspector Jason White reported his findings in a memorandum dated December 22, 2011 (Exhibit 16(a)). The inspector concluded that occupancy must be limited to two occupants, in habitable space of 613 square feet. Exhibit 16(a).

The hearing went forward as scheduled on January 5, 2012. No opposition appeared at the hearing. The record was held open until February 6, 2012, to afford the Petitioner an opportunity to submit the deed to the property and to amend his application to reflect that his wife (Ms. Avella) co-owned the property. T. 48-49.¹ Mr. Martinez did submit the deed and a new application form co-signed by Ms. Avella who also filed a statement indicating she was willing to abide by all conditions of the special exception, if approved. Exhibits 22-24. A Notice of Motion to Amend the petition was issued reflecting the change of applicants (Exhibit 25) and was

¹ All transcript citations are to the transcript of the January 5, 2012, public hearing.

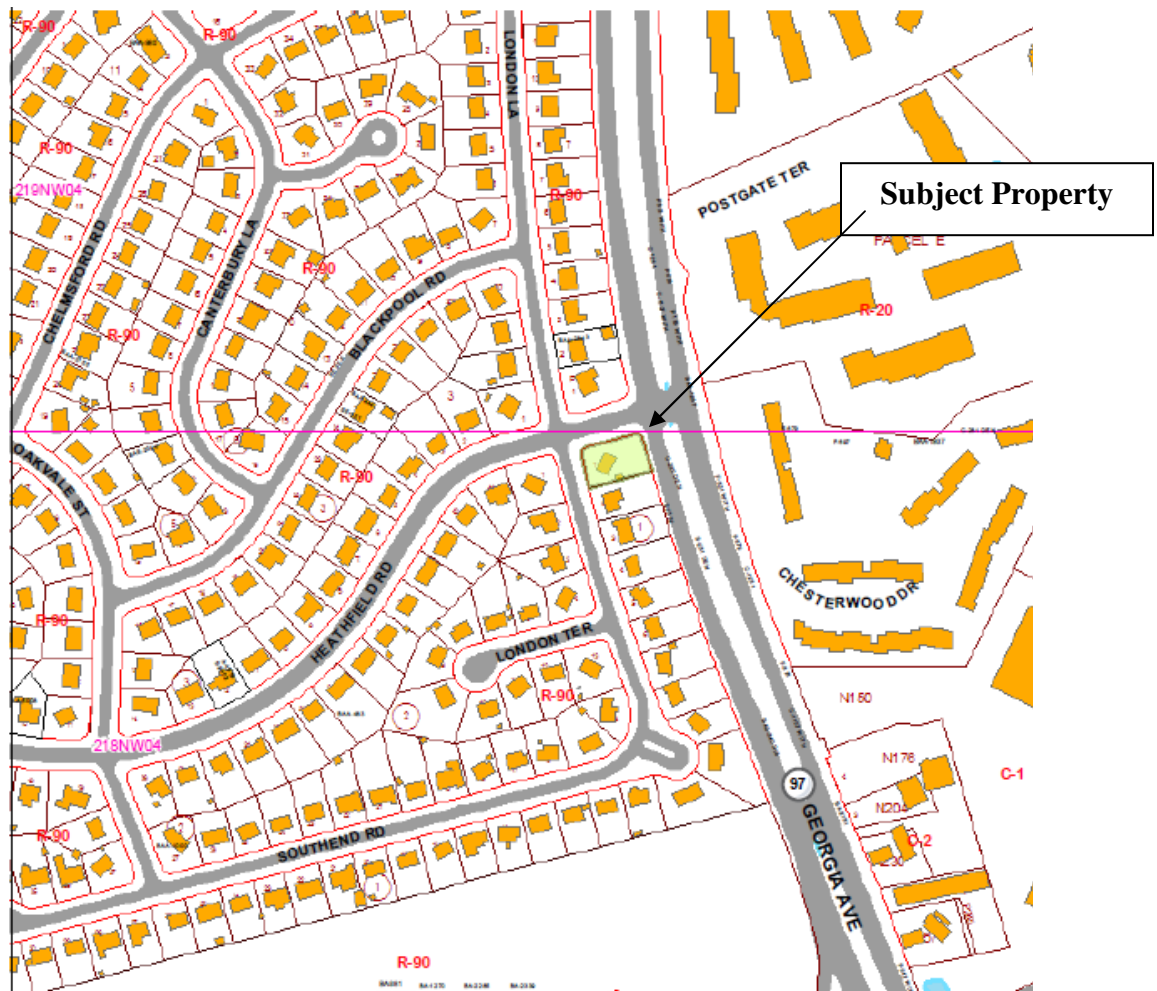
granted as a matter of course (no objection being received). The record closed on February 6, 2012.

For the reasons set forth below, the Hearing Examiner recommends approval of the requested special exception, subject to the conditions set forth in Section V of this Report.

II. FACTUAL BACKGROUND

A. The Subject Property and Its Current Use

The subject property is located at 4000 Heathfield Road, Rockville, Maryland. The property lies on the western side of Georgia Avenue, north of its intersection with Connecticut Avenue. A location map (Exhibit 15, Attachment 2) included in the Staff Report, shows the location of the subject property:



Bounded by Heathfield Road, London Lane, and Georgia Avenue, the lot contains a total 12,403 square feet and is improved with a one-story single-family home with a basement. Technical Staff states that, based on information provided by the Petitioners, the home is approximately 2,000 square feet. Exhibit 15, p. 11. Technical Staff reports that the property is a corner lot which fronts on both Heathfield Road and London Lane. Exhibit 15, p. 2. It has a relatively flat lawn, with shrubs and shade trees along the front and back of the property. Sidewalks border the property along Georgia Avenue, Heathfield Road, and London Lane. Pictures of the single-family home are included as Attachment 3 to the Technical Staff Report (shown below and on the next page):

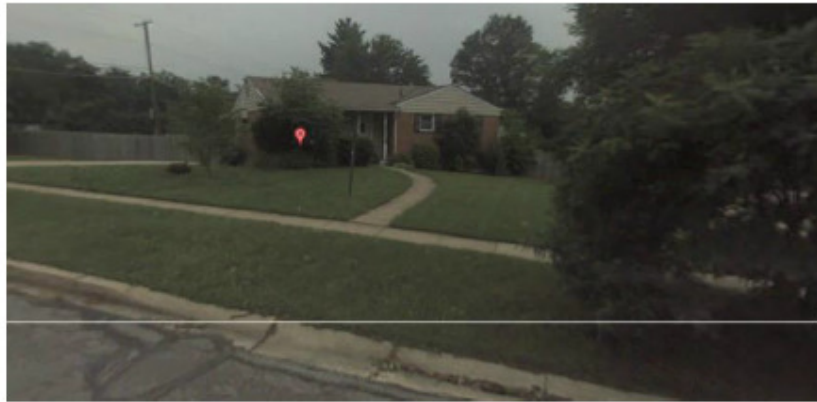


Figure 1: Looking from London Ln, towards Georgia Ave



Figure 2: Heathfield Rd, London Ln on right

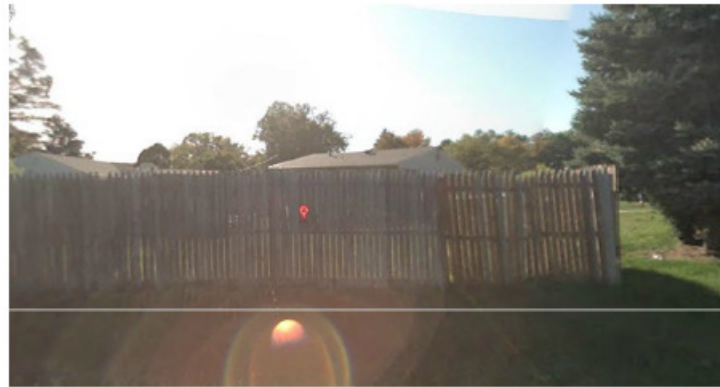


Figure 3: Georgia Ave, towards London Ln (Heathfield on right)

B. The Surrounding Neighborhood

Technical Staff advises that the property adjoins and confronts single-family homes within the R-90 Zone on all sides. Exhibit 15, p. 5. It delineated the neighborhood as bounded by Blackpool Road to the north, Georgia Avenue (MD 97) to the east, Oakvale Street to the west, and Southend Street to the south. Technical Staff reports that the neighborhood consists primarily of single-family residential dwellings in the R-90 Zone. According to Staff, one other accessory apartment exists in the neighborhood. Exhibit 15, p. 2. Having no evidence to the contrary, and further evidenced by the location map shown on page 3, the Hearing Examiner agrees with Staff's characterization of the neighborhood and so finds.

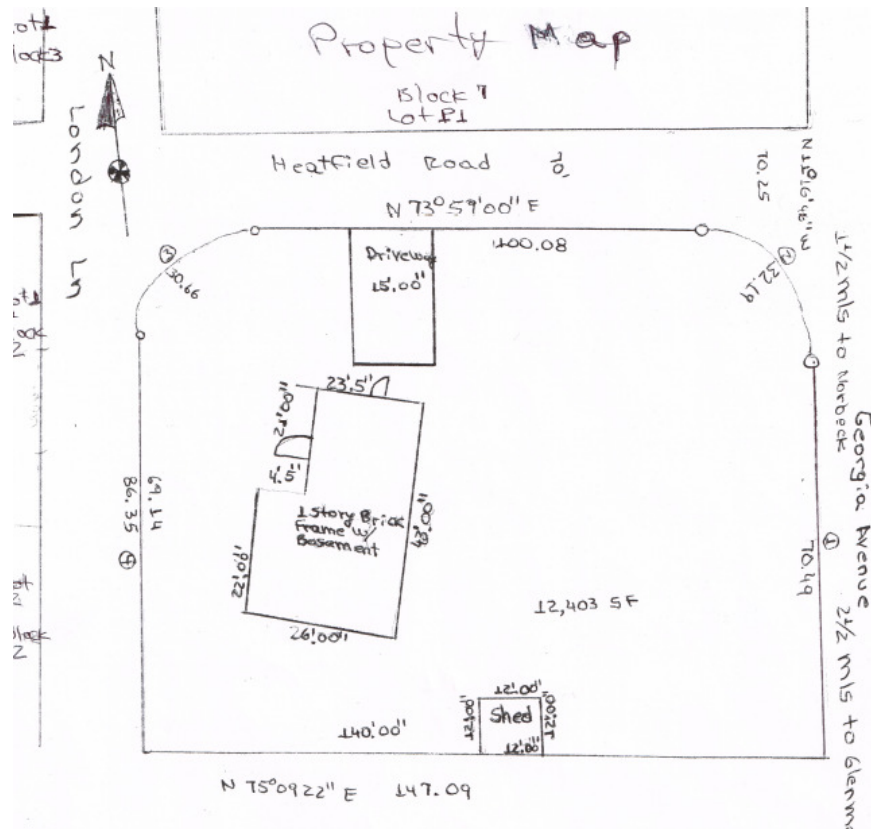
C. The Master Plan

The subject property lies within the *1994 Aspen Hill Master Plan* (Plan). Exhibits 8 and 15. Objectives of the Plan include protecting and preserving current land use patterns, the integrity of existing residential neighborhoods, and to increase housing resources. Exhibit 8, p. 29. The Plan also recommends that over concentration of special exceptions be avoided along major transportation routes and modifications to existing structures should be screened and buffered from adjoining residential properties. Exhibit 15, p. 3. Technical Staff concluded that

the petition is consistent with the Master Plan objectives, as “the applicant is not proposing to alter the existing residential appearance of the property to accommodate this request, nor is there an excessive concentration of special exceptions in staff’s defined neighborhood.” Exhibit 12, p. 3. The Hearing Examiner agrees and finds that the proposed use is consistent with the Plan.

D. The Proposed Use

The existing single-family home fronts diagonally toward Heathfield Road and London Lane, with driveway access from Heathfield Road, as shown on the drawing submitted by the Petitioner² (Exhibit 3), below:



² Petitioner testified that his house was built prior to 1968; therefore, there is no site plan for the subject property. T. 17-18. Records of the Maryland State Department of Assessment and Taxation indicate that the home was built in 1958. Exhibit 11. The Petitioner states that he drew the site plan reproduced here by hand and to scale. Exhibit 13; T. 18.

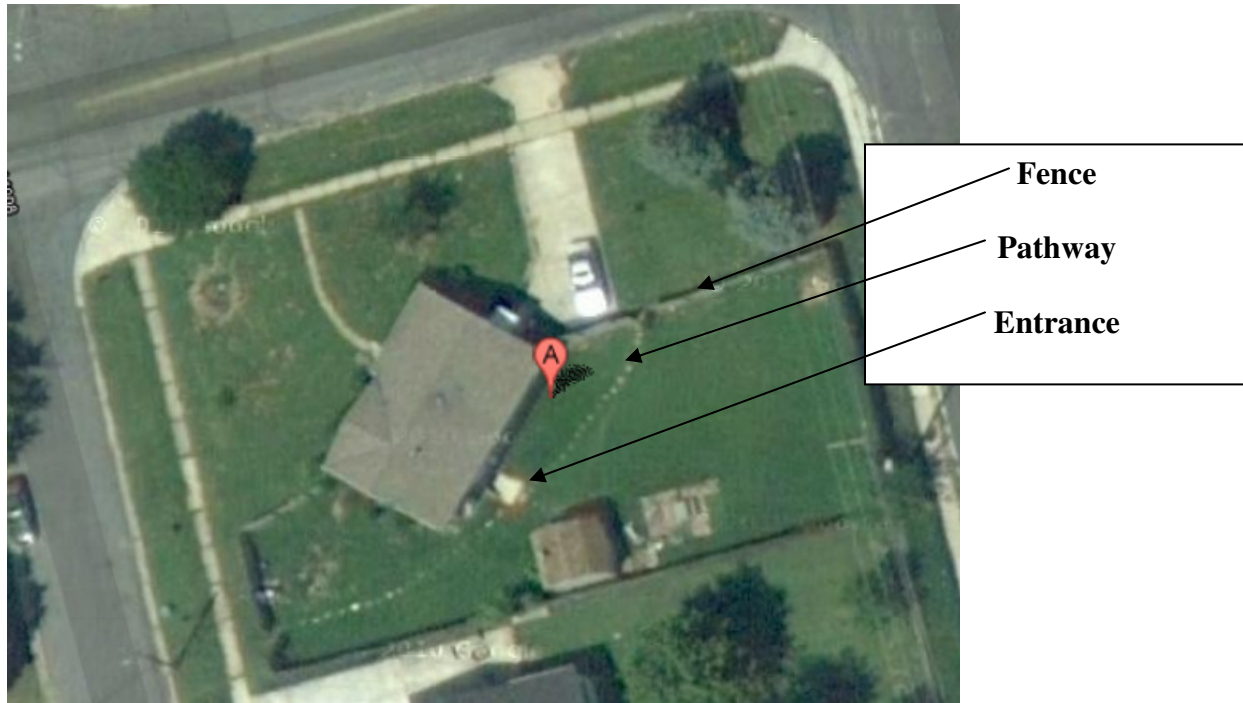
The rear entrance (not shown on the site plan, but on the floor plans reproduced on page 9), is located on the side of the property facing Georgia Avenue. According to the Petitioner, access to the rear entrance (shown in Exhibit 9(b), on the next page) is via a slate walkway leading from the driveway to the rear entrance through a gap in a wooden fence surrounding the rear yard of the property (Exhibit 14). The gap is shown on a photograph submitted by the Housing Inspector, (Exhibit 17(e)), shown below:

**Gap Providing
Access to Slate
Pathway**



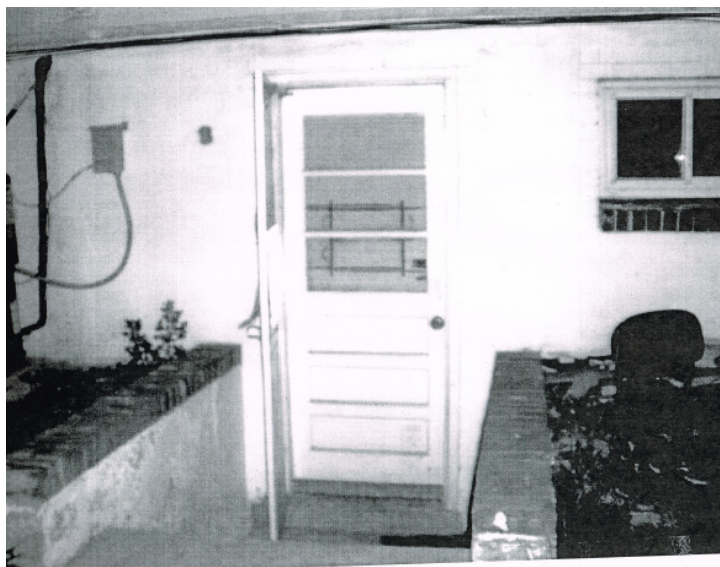
Neither the site plan nor the landscape plan (Exhibits 3 and 6, respectively) show the rear pathway, the entrance to the accessory apartment or the fence surrounding the back yard. In order not to delay the case, the Hearing Examiner will take official notice of an aerial photograph from Google Earth Maps (shown on the next page), which show both the slate pathway and the wooden fence. Should Petitioners disagree with the accuracy of the photograph, they may do so during the 10-day period to request oral argument before the Board and the Hearing Examiner will re-open the record to consider any objection. Because these items are not now included on the site plan or landscape plan (Exhibits 1 and 6, respectively), a condition of approval of the special exception will include a requirement to show the slate walkway, fence, and accessory apartment entrance on the site plan and

landscape plan prior to the issuance of a permit from the Department of Housing and Community Affairs.

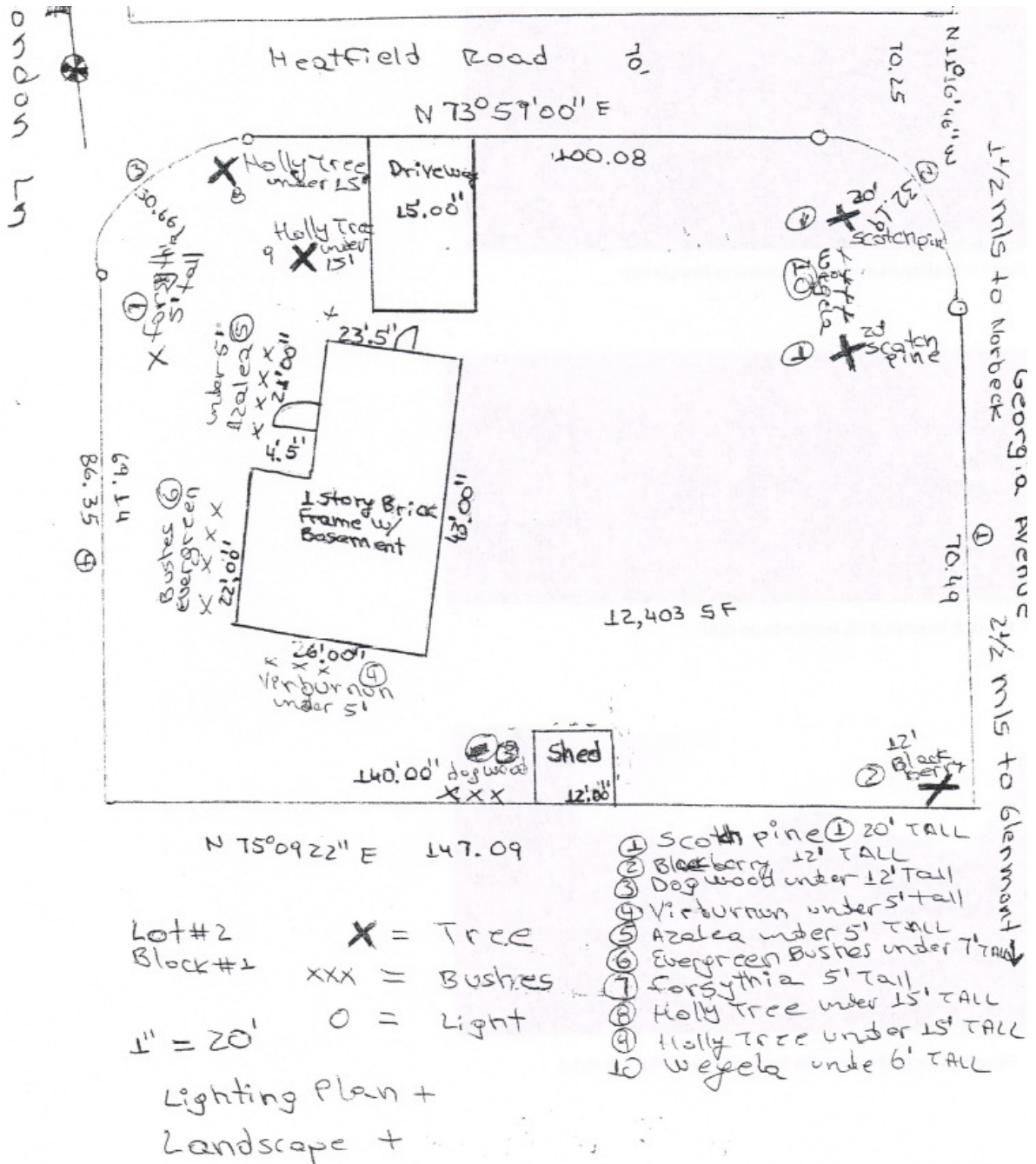


**Google Maps Photograph Showing Fence,
Slate Pathway, and Acc. Apt. Entrance**

The rear entrance is shown on a photograph submitted by the Petitioner (Exhibit 9(b)):



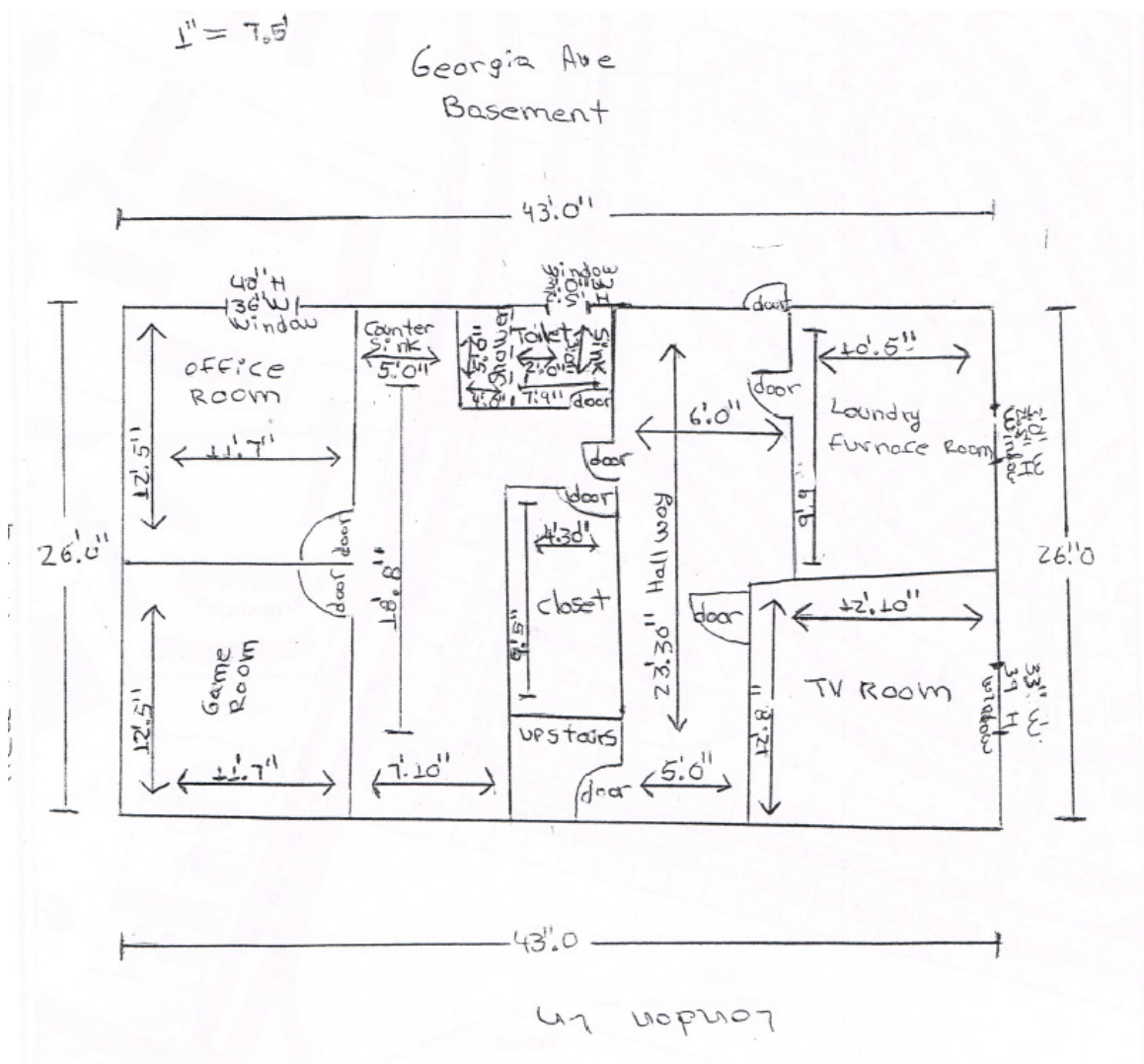
Petitioners do not propose any changes to the existing landscaping on the property. The landscaping plan is attached to the Technical Staff Report (Exhibit 15, Attachment 4), and is reproduced below:



The Petitioner does not currently occupy the house; however, he submitted a letter and testified that the apartment will be occupied by his mother, Margarita Martinez. Exhibit 14; T. 13.

Technical Staff advises that the driveway may accommodate three cars; the Housing Inspector, Mr. Jason White, advises that it can fit four cars. Exhibit 15, p. 2, T. 24.

Floor plans submitted by the Petitioner (Exhibit 15, Attachment 1) show that the proposed basement apartment will consist of approximately 751 square feet, and the Housing Inspector advises that there is 613 square feet of habitable space:



The floor plans show an “office”, a “game room”, and a “TV room”. Mr. White testified that the only room that may be used for sleeping is the room marked “office” because it has adequate window egress under Housing Code standards. T. 24. Exhibit 13. The window in the “TV room” does not meet the requirements of the Housing Code. Therefore, while the Petitioner may use the office room as a bedroom under existing conditions, he may not use the TV room as a bedroom until a new window that meets Code standards is installed. T. 24. The Housing Inspector advised that only one person may occupy the apartment. T. 24.

The Housing Inspector inspected the property on December 14, 2011, and found the issues to be as follows (Exhibit 16(a)):

1. The owner does not live in the accessory apartment. The owner’s primary residence is 4246 Bar Harbor Place, Olney, Maryland 20832.
2. Entrance to apartment is in the rear of the house
3. Must repair screen door (screen and glass)
4. Must install door knob on entrance door
5. Must install light bulbs in entrance hallway and hall leading to the kitchen and dining area
6. “Television room”: must install door knob
7. Must secure “party wall”/door with lock
8. “Game room” must not be used for sleeping unless windows that meet Housing Code requirements for light, egress and ventilation are present
9. Must install stove...
10. “Office room”: Must install cover plate for exhaust (only one(1) occupant permitted)
11. “Television room”/bedroom if used for sleeping: Must install a window that is at least five (5) square feet in net clear opening and must [be] able to open without the use of a tool with a minimum net clear height of twenty-four (24) inches and a net clear opening of twenty (20) inches with the bottom of the opening not more than forty-four (44) inches above the floor (a window that opens down or otherwise blocks a way out is unacceptable)(permit may be required)
12. Must install globe cover for kitchen corridor lights and paint all rusted areas
13. Must repair walkway next to driveway
14. Must repair all cracks in driveway
15. Must repair steel landing and all appurtenances (leading from driveway to door)

16. Must install address number to dwelling
17. Must paint (clean/scrape/prep) the exterior pole lamp leading to main dwelling entrance
18. Must repair/replace rear screen for main dwelling (window 3rd from left)
19. Must repair all missing slats on fence adjacent to Georgia Avenue
20. Must remove, from outside, all indoor furniture, carpet, marble slabs, and trash
21. Must remove all solid waste in the front and rear of property to include but not limited to, wood, tires, cement blocks, pipes, gas cans, hoses, buckets, marble slabs, trash and rubbish
22. Must paint (clean/scrape/prep) all exterior trim.

Mr. Martinez testified that he had corrected all the deficiencies listed above except for repair of the driveway, which he plans to complete in summer. T. 12. He agreed to make all of the required repairs. T. 12. Ms. Avella submitted a letter dated January 10, 2012, stating that she also agreed to make the necessary repairs and to adhere to all conditions of approval of the special exception. Exhibit 21.

Mr. Martinez testified that his neighbors had voiced concerns about on-street parking. He does not feel this is a problem because he has one family consisting of five people in the main dwelling. The family has between two and three cars. The tenants park only one of these cars on the street. T. 20-21. Parking on the street is unrestricted and he believes any parking problems stem from people on another street parking along his property. T. 22. No one appeared in opposition to the application. He submitted the following pictures to show the availability of on-street parking around his property (Exhibits 18(a) - (c), shown below and on the next page):





E. Traffic Impacts

Technical Staff advises that the requested special exception will generate one additional peak hour trip for the both uses on the property for a total of two peak hour trips. Exhibit 15. Due to the small scale of the proposed use, the Hearing Examiner has no basis in this record to disagree with the finding of Technical Staff and therefore agrees that the accessory apartment meets the requirements of Local Area Transportation Review (“LATR”). Similarly, Technical Staff concluded that the proposed accessory apartment generates fewer than three (3) total peak hour trips and therefore is not subject to Policy Area Mobility Review (“PAMR”). There being no evidence in the record to the contrary, the Hearing Examiner so finds.

F. Environmental Impacts

Petitioner does not propose any external changes to the site. Technical Staff advises that the property is exempt from the Forest Conservation Law and there are no environmental issues associated with the site. Exhibit 15, p. 3. Based on this evidence, the Hearing Examiner finds that Petitioner's request will have no adverse environmental impacts.

G. Community Response

There was no community response to the special exception request.

III. SUMMARY OF THE HEARING

A. Petitioner's Case

Petitioner testified at the public hearing in support of the petition. Mr. Martinez adopted the findings and conclusions of the Technical Staff Report as his own evidence and agreed to abide by all conditions of approval. T. 11-12. He also agreed to make all repairs required by the Department of Housing and Community Affairs, although he cannot finish the driveway repairs until the summer. T. 12. He testified that his mother currently occupied the basement apartment and acknowledged that only his mother could occupy the basement unit. T. 13. He identified the combined Site Plan, Landscape Plan and Lighting Plan Mr. Robert Goff, a DHCA inspector, also testified as to compliance with the Housing Code. He also testified that there was available on-site parking along London Lane. T. 37-41.

B. Housing Inspector Testimony

Mr. White summarized the results of December 14, 2011, inspection, set forth earlier. He emphasized that only the office could be used as a bedroom unless the Petitioner installed a window which met the requirements of the Housing Code. He submitted photographs of the areas needing repair, as well as of the subject property. Exhibit 17, T. 22-37. He testified to the

results of his inspection, summarized above and in his inspection report. Exhibit 16(a). T. 23-28.

III. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards and conditions are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Technical Staff concluded that Petitioner will have satisfied all the requirements to obtain the special exception, if Petitioners comply with the recommended conditions. Exhibit 15.

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Code 59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as Petitioner complies with the recommended conditions set forth in Part V, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Code Section 59-G-1.21 requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code, Section 59-G-1.21. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and

operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with an accessory apartment. Characteristics of the proposed accessory apartment that are consistent with the “necessarily associated” characteristics of accessory apartments will be considered inherent adverse effects, while those characteristics of the proposed use that are not necessarily associated with accessory apartments, or that are created by unusual site conditions, will be considered non-inherent effects. The inherent and non-inherent effects thus identified must then be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff lists the following inherent characteristics of accessory apartments (Exhibit 15, p. 4):

- (1) The existence of the apartment as a separate entity from the main living unit, but sharing a party wall with the main unit;
- (2) The provision within the apartment of the necessary facilities, spaces and floor area to qualify as a habitable space under the Building Code;
- (3) The provision of a separate entrance and walkway and sufficient lighting;
- (4) The provision of sufficient parking;
- (5) The existence of an additional household on the site; and
- (5) Additional activity from that household, including potential for additional noise.

The Hearing Examiner concludes that, in general, an accessory apartment has characteristics similar to a single-family residence, with only a modest increase in traffic,

parking and noise that would be consistent with a larger family occupying a single-family residence. Thus, the inherent effects of an accessory apartment would include the fact that an additional resident (or residents) will be added to the neighborhood, with the concomitant possibility of an additional vehicle or two.

Technical Staff found “[t]he size, scale and scope of the requested use are minimal, and that any noise, traffic, neighborhood disruption, or environmental impacts associated with the use would be slight. There are no unusual characteristics of the site. Staff concludes that there are no non-inherent adverse effects arising from the accessory apartment sufficient to form a basis for denial.” Exhibit 15, p. 4.

As the accessory apartment is fully contained within the interior of the single-family home, will generate only one additional trip, contains a separate walkway, an entrance illuminated with lighting characteristic of residential homes, and has ample off-street parking, the Hearing Examiner agrees with Staff that there are no non-inherent adverse effects of the requested use and there will be no adverse effects sufficient to warrant denial of the petition.

B. General Standards

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the Petitioner’s written evidence and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

Sec. 59-G-1.21. General conditions.

§5-G-1.21(a) -*A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) Is a permissible special exception in the zone.

Conclusion: An accessory apartment is a permissible special exception in the R-90 Zone, pursuant to Code § 59-C-1.31.

- (2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

Conclusion: The proposed use complies with the specific standards set forth in § 59-G-2.00 for an accessory apartment, as outlined in Part C, below.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: The subject property is covered by the 1994 Aspen Hill Master Plan. Technical Staff found that the special exception would further the objective of the Plan to “encourage the protection, enhancement and continuation of current land use patterns and reinforce the integrity of existing residential neighborhoods.” Staff reasoned that, because there will be no exterior modifications to the existing residential use, the petition meets this objective. The Hearing Examiner agrees and further finds that the petition meets the Plan’s objective to increase housing resources within the area.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design,*

scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses. The Board or Hearing Examiner must consider whether the public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.

Conclusion: The accessory apartment will be located in the rear of an existing dwelling and will not require any significant external changes. It therefore will maintain its residential character. The Housing Inspector advises that the driveway may accommodate four vehicles; therefore, there will be sufficient parking, both on- and off-street, and traffic conditions will not be affected adversely, according to Transportation Planning Staff. There is only one other similar use in the vicinity (another accessory apartment), two home occupations (a smaller scale special exception use) as well as a substation in the defined neighborhood. Based on these facts and the other evidence of record, the Hearing Examiner concludes, as did Technical Staff, that the proposed use will be in harmony with the general character of the neighborhood. Technical Staff indicates that the subject site will be adequately served by existing public facilities (Exhibit 15, Attachment 5), and the evidence supports this conclusion.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: For the reasons set forth in answer to the previous section of this report, the special exception will not be detrimental to the use, peaceful enjoyment, economic value, or development of the surrounding properties or the defined neighborhood, provided that the special exception is operated in compliance with the listed conditions of approval.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at*

the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: Technical Staff found that the use “would not cause any objectionable adverse effects.” Exhibit 15, p. 5. Since the use will be indoors and residential, and having no evidence to the contrary, the Hearing Examiner finds that it will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: Technical Staff advises that the addition of this special exception will result in less than 6% of the properties within the defined neighborhood containing a special exception use. A total of four other special exceptions exist in the neighborhood, including two home occupations, another accessory apartment, and one sub-station. Exhibit 15, p. 6. Based on this evidence, the Hearing Examiner finds that the proposed special exception will not increase the number, scope, or intensity of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

Conclusion: Technical Staff indicates that the subject site will be adequately served by existing public facilities (Exhibit 15, Attachment 5), and the evidence supports this conclusion.

- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*
- (B) *If the special exception does not require approval of a preliminary plan of subdivision, the Board of Appeals must determine the adequacy of public facilities when it considers the special exception application. The Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.*

Conclusion: The special exception sought in this case would not require approval of a preliminary plan of subdivision. Therefore, the Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the applicable Growth Policy standards. These standards include Local Area Transportation Review (“LATR”) and Policy Area Mobility Review (PAMR). As indicated above, Transportation Planning Staff did do such a review, and concluded that the proposed accessory apartment use would add one additional trip during each of the peak-hour weekday periods. Exhibit 15, Attachment 5. Since the existing house, combined with the proposed accessory apartment, would generate fewer than 30 total trips in the weekday morning and evening peak hours, the requirements of the LATR are satisfied without a traffic study. Because the

proposed use generates fewer than 3 peak hour trips, PAMR is also satisfied. Therefore, the Transportation Staff concluded, as does the Hearing Examiner, that the instant petition meets all the applicable Growth Policy standards.

(C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: The Petitioner testified that on-street parking is permitted along London Lane and submitted photographs (Exhibits 18(a)-(c)), showing that ample parking is available. Technical Staff and the Housing Inspector advise that the driveway may accommodate 3-4 vehicles. Based on the evidence of record, especially given the availability of off-street and on-street parking at the site and the limited number of additional trips generated by the special exception, the Hearing Examiner finds that the use will not cause a traffic hazard on the public roadways abutting the property and will not reduce the safety of vehicular or pedestrian traffic. Exhibit 13, p. 7.

Section 59-G-1.23 General Development Standards (Applicable Standards Only)

(a) **Development Standards.** Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.21 or in Section G-2

Staff advises that the proposed use meets all of the developments in the R-90 Zone, as set forth in the attached table, included in the Technical Staff report reproduced on the next page.

(b) **Parking Requirements.** Special exceptions are subject to all relevant requirements of Article 59-E.

Conclusion: The proposed use meets the requirements set in Section 59-G of the Zoning Ordinance, as set forth below.

	<u>Required</u>	<u>Provided</u>
Maximum Building Height:	3 stories or 40 ft.	1 story
Minimum Lot Area:	9,000 sq. ft.	12,403 sq. ft.
Minimum Width at Front Building Line:	60 ft.	61 ft.
Minimum Width at Proposed Street Line:	25 ft.	±147 ft.
Minimum Front Yard Setback:	30 ft.	±30 ft.
Minimum Side Yard Setback:	8 ft. one side, 25 ft. sum of both sides	±20 ft. left side, 90. sum of both sides
Minimum Rear Yard Setback:	10 ft.	20 ft.
Maximum Building Coverage:	30%	8.1%
Maximum Floor Area for Accessory Apartment	1,200 sq. ft. or less than 50% of GFA	±751 sq. ft.

C. Specific Standards

The testimony and the exhibits of record, especially the Technical Staff Report (Exhibit 15), provide sufficient evidence that the specific standards required by Section 59-G-2.00 are satisfied in this case, as described below.

Sec. 59-G-2.00. Accessory apartment.

A special exception may be granted for an accessory apartment on the same lot as an existing one-family detached dwelling, subject to the following standards and requirements:

(a) Dwelling unit requirements:

- (1) Only one accessory apartment may be created on the same lot as an existing one-family detached dwelling.*

Conclusion: Only one accessory apartment is proposed.

- (2) The accessory apartment must have at least one party wall in common with the main dwelling on a lot of one acre (43,560*

square feet) or less. On a lot of more than one acre, an accessory apartment may be added to an existing one-family detached dwelling, or may be created through conversion of a separate accessory structure already existing on the same lot as the main dwelling on December 2, 1983. An accessory apartment may be permitted in a separate accessory structure built after December 2, 1983, provided:

- (i) The lot is 2 acres or more in size; and*
- (ii) The apartment will house a care-giver found by the Board to be needed to provide assistance to an elderly, ill or handicapped relative of the owner-occupant.*

Conclusion: The apartment is located in the basement of an existing house, and therefore shares a wall in common, as required for a lot of this size (under an acre).

- (3) An addition or extension to a main dwelling may be approved in order to add additional floor space to accommodate an accessory apartment. All development standards of the zone apply. An addition to an accessory structure is not permitted.*

Conclusion: No new addition or extension of the main dwelling is proposed. The accessory apartment will be located in an existing dwelling.

- (4) The one-family detached dwelling in which the accessory apartment is to be created or to which it is to be added must be at least 5 years old on the date of application for special exception.*

Conclusion: According to records from the Department of Assessments and Taxation, the house was built in 1958. Exhibits 15, 11. It therefore meets the “5 year old” requirement.

- (5) The accessory apartment must not be located on a lot:*

- (i) That is occupied by a family of unrelated persons; or*
- (ii) Where any of the following otherwise allowed residential uses exist: guest room for rent, boardinghouse or a registered living unit; or*
- (iii) That contains any rental residential use other than an accessory dwelling in an agricultural zone.*

Conclusion: The Petitioner testified that the main dwelling is rented to a family composed of approximately 5 persons and that he understands the limitations on rental compensation

in the ordinance. T. 20-24. The use as proposed does not violate any of the provisions of this subsection; a requirement that that occupancy of both the main house and the accessory apartment meet all Code requirements will be a condition of this approval.

(6) Any separate entrance must be located so that the appearance of a single-family dwelling is preserved.

Conclusion: Access to the accessory apartment is via a slate walkway leading to the rear of the home behind a perimeter fence. There are no changes proposed to the existing structure (other than repairs required by the Housing Code) and the residential appearance of the dwelling will be unchanged.

(7) All external modifications and improvements must be compatible with the existing dwelling and surrounding properties.

Conclusion: Petitioners are not proposing any new construction or modifications to the exterior of the dwelling, with the exception of making the repairs required by DHCA. The Petitioners must revise their site plan (Exhibit 3) and landscape plan (Exhibit 6) to show the existing walkway, perimeter fence and entrance to the apartment prior to the issuance of a permit from the Department of Housing and Community Affairs. The Hearing Examiner finds that repairs, necessary for residential occupancy, will not affect the residential nature of the structure.

(8) The accessory apartment must have the same street address (house number) as the main dwelling.

Conclusion: The accessory apartment will have the same address as the main dwelling.

(9) The accessory apartment must be subordinate to the main dwelling. The floor area of the accessory apartment is limited to a maximum of 1,200 square feet.

Conclusion: The accessory apartment is subordinate to the main dwelling and under 1,200 square feet, as it occupies approximately 751 square feet of space (only 613 square feet of which is habitable space). Technical Staff advises that, based on information provided by the Petitioner, the existing dwelling is approximately 2,000 square feet. Exhibits 15, 16(a). Based on this evidence, the Hearing Examiner finds that the apartment is subordinate to the main dwelling.

59-G § 2.00(b) Ownership Requirements

- (1) *The owner of the lot on which the accessory apartment is located must occupy one of the dwelling units, except for bona fide temporary absences not exceeding 6 months in any 12-month period. The period of temporary absence may be increased by the Board upon a finding that a hardship would otherwise result.*

Conclusion: Mr. Martinez' mother will live in the accessory apartment.

- (2) *Except in the case of an accessory apartment that exists at the time of the acquisition of the home by the Petitioner, one year must have elapsed between the date when the owner purchased the property (settlement date) and the date when the special exception becomes effective. The Board may waive this requirement upon a finding that a hardship would otherwise result.*

Conclusion: According to the deed submitted into the record, Petitioner purchased the home in 2003. Exhibit 22. The one-year rule has therefore been satisfied.

- (3) *Under no circumstances, is the owner allowed to receive compensation for the occupancy of more than one dwelling unit.*

Conclusion: The Petitioner testified that the main dwelling is currently occupied by a family of five and that he agreed that he will receive compensation for only one dwelling unit. Therefore, the use as proposed meets this standard, which will be incorporated as a condition of the special exception.

(4) For purposes of this section owner means an individual who owns, or whose parent or child owns, a substantial equitable interest in the property as determined by the Board.

Conclusion: Petitioners have submitted a deed dated October 17, 2003, evidencing ownership in the names of William Martinez and Luz Marina Avella. Exhibit 22. The Petitioners amended the special exception to include both property owners. Exhibit 24. Petitioner states that his mother, Ms. Martinez, will occupy the basement apartment. Therefore, the Hearing Examiner concludes that use as proposed meets this standard, which will be included as a condition of approval.

(5) The restrictions under (1) and (3) above do not apply if the accessory apartment is occupied by an elderly person who has been a continuous tenant of the accessory apartment for at least 20 years.

Conclusion: Not applicable.

59-G § 2.00(c) Land Use Requirements

(1) The minimum lot size must be 6,000 square feet, except where the minimum lot size of the zone is larger. A property consisting of more than one record lot, including a fraction of a lot, is to be treated as one lot if it contains a single one-family detached dwelling lawfully constructed prior to October, 1967. All other development standards of the zone must also apply, including setbacks, lot width, lot coverage, building height and the standards for an accessory building in the case of conversion of such a building.

Conclusion: The subject property consists of a single lot that is approximately 12,403 square feet in size, and therefore satisfies this requirement.

(2) An accessory apartment must not, when considered in combination with other existing or approved accessory apartments, result in excessive concentration of similar uses, including other special exception uses, in the general neighborhood of the proposed use(see also section G-1.21 (a)(7) which concerns excessive concentration of special exceptions in general).

Conclusion: As there is only one accessory apartment in the immediate vicinity of the subject property, the Hearing Examiner finds, as did Technical Staff, that the petition will not create an excessive concentration of similar uses.

(3) Adequate parking must be provided. There must be a minimum of 2 off-street parking spaces unless the Board makes either of the following findings:

- (i) More spaces are required to supplement on-street parking; or*
 - (ii) Adequate on-street parking permits fewer off-street spaces.*
- Off-street parking spaces may be in a driveway but otherwise must not be located in the yard area between the front of the house and the street right-of-way line.*

Conclusion: Technical Staff and the Housing Inspector concluded that the off-street parking area may accommodate three (3) or four (4) cars. Both Technical Staff and Petitioners advise that on-street parking is unrestricted and Petitioner testified and submitted evidence that there is ample parking along London Lane. The Hearing Examiner finds, therefore, that the minimum requirement of two (2) spaces has been met.

D. Additional Applicable Standards

Not only must an accessory apartment comply with the zoning requirements as set forth in 59-G, it must also be approved for habitation by the Department of Housing and Community Affairs. As discussed in Part II. D. of this Report, the Housing Code Inspector's report (Exhibit 16(a)) notes certain issues, and recommends that occupation of the accessory apartment be limited to no more than one person. As mentioned above, Petitioners have agreed to meet all conditions, and will make the repairs required by the Housing Code Inspector.

V. RECOMMENDATION

Based on the foregoing analysis, I recommend that Petition No. S-2821, which seeks a special exception for an accessory apartment to be located at 4000 Heathfield Road, Rockville, Maryland, be GRANTED, with the following conditions:

1. The Petitioner is bound by his testimony, representations and exhibits of record;
2. The Petitioner must make the repairs needed to comply with the conditions set forth in the Memorandum of Jason White, Housing Code Inspector, Division of Housing and Community Affairs (Exhibit 16(a)).
3. No more than one person, who must be Mr. Martinez' mother, may reside in the accessory apartment;
4. The main dwelling unit must not be occupied by a family of unrelated persons;
5. The Petitioner must submit to the Board of Appeals and to the Department of Housing and Community Affairs (DHCA) a revised site plan (Exhibit 3) and landscape plan (Exhibit 6), showing the locations of the rear entrance to the apartment, the fence surrounding the perimeter of the rear yard of the property, and the slate walkway to the accessory apartment prior to applying for a permit from the DHCA for the proposed use.
6. The room marked as "office" on the Floor Plan (Exhibit 5) is the only room that may be used for sleeping.
7. Petitioner must not receive compensation for the occupancy of more than one dwelling unit; and
8. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped

accessibility requirements), regulations, directives and other governmental requirements.

Dated: March 8, 2012

Respectfully submitted,

A handwritten signature in black ink, consisting of a stylized 'L' and 'R' followed by a long horizontal flourish.

Lynn A. Robeson
Hearing Examiner